

**RULES  
OF  
DEPARTMENT OF REVENUE  
INCOME TAX DIVISION**

**CHAPTER 560-7-8  
RETURNS AND COLLECTIONS**

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**560-7-8-.45 Film Tax Credit**

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(1) **Purpose.** This rule provides guidance concerning the implementation and administration of the income tax credits contained within the Georgia Entertainment Industry Investment Act (hereinafter “Act”) under O.C.G.A. § 48-7-40.26.

(2) **Coordination of Agencies.** The Department of Economic Development is the state agency responsible for determining which projects qualify for the tax credits authorized under the Act.

(3) **Definition.** “Film Tax Credit” means the credit allowed pursuant to the Georgia Entertainment Industry Investment Act, O.C.G.A. § 48-7-40.26.

(4) **Affiliates.**

(a) **Threshold Determination.** O.C.G.A. § 48-7-40.26(c) and (d) discuss the investment of a production company and its affiliates. The affiliates are included solely to determine whether or not the \$30 million expenditure threshold has been exceeded for the purpose of determining under which of these subsections the

film tax credit will be calculated. Once that determination is made, the \$500,000 base investment threshold or excess base investment threshold is calculated for each separate production company and the film tax credit is earned solely by the production company which has qualified investment expenditures in a state certified production. If more than one affiliated production company has qualifying productions in Georgia, then each production company will calculate its film tax credit independently of its affiliates.

(b) Assignment of Credit to Affiliates. Once the production company establishes the amount of the film tax credit by filing the tax return for the taxable year in which the credit was earned, the credit may then be assigned to the production company's affiliates under the provisions of O.C.G.A. § 48-7-42. When a film tax credit is assigned to an affiliated entity, the affiliated entity may apply the credit solely against its own income tax liability. The affiliated entity may not sell or transfer the credit pursuant to paragraph (11) of this rule and may not claim any excess film tax credit against its withholding tax. Any unused credit may be carried forward by such affiliated entity until the credit is used or it expires, whichever occurs first.

**(5) Base Investment in a Tier 1 or Tier 2 County.**

(a) The additional credit amount for a base investment or excess base investment under O.C.G.A. § 48-7-40.26(c)(2) and (d)(2) will be based upon purchase receipts, invoices, contracts, or other documentation reflecting purchases of property from vendors located within a Tier 1 or Tier 2 county. For services, the expenditure will be based on where the service was actually performed.

(b) The additional credit amount for total aggregate payroll in a Tier 1 or Tier 2 county under O.C.G.A. § 48-7-40.26(c)(2) and

(d)(2) will be based on the salaries paid to those employees who actually worked in the Tier 1 or Tier 2 county.

1. If the production company is unable to track the actual time spent by an employee in a Tier 1 or Tier 2 county, the production company may calculate the total aggregate payroll in a Tier 1 or Tier 2 county by multiplying the total payroll of employees who worked in a Tier 1 or Tier 2 county by a ratio. Such ratio shall be computed by dividing the shooting days in the Tier 1 or Tier 2 county by the total shooting days spent in Georgia in a state certified production.

2. Example: A production company has 175 employees on a state certified production in Georgia. The total aggregate Georgia payroll for the production is \$750,000. The production company shoots in a Tier 1 county for 4 days out of a total of 60 shooting days. There are 125 employees who worked on location in that Tier 1 county and the total aggregate payroll for those 125 employees is \$400,000. The production company would allocate \$26,667 [ $\$400,000 \text{ multiplied by } (4 \text{ days divided by } 60 \text{ days})$ ] of payroll for the additional Tier 1 credit.

(c) Should the tier designation, as ranked and designated by the commissioner of community affairs, change in future years, such re-ranking of the tier will change the computation of the film tax credit if the project occurs in two or more years. Accordingly, if a Tier 2 county is re-ranked as a Tier 3 county in a subsequent taxable year, such additional credit will no longer be available to the production company for expenditures incurred in such subsequent year. Alternatively, if a Tier 3 county is re-ranked as a Tier 2 county in a subsequent taxable year, such additional credit will be available to the production company for expenditures incurred in such subsequent year.

**(6) Certification of Qualified Production Activities.** Prior to claiming the film credit, each new film, video, or digital project must be certified by the Department of Economic Development. Production companies that are required to reduce their investment basis by the amount of expenditures in prior years, must receive certification from the Department of Economic Development for current year projects prior to claiming the film credit. The Department of Economic Development will provide a Credit Certificate Number to the production company for each qualifying project which is approved. The credit certificate number(s) will be used to report any transfer or sale of film tax credit by the production company for the qualifying project(s).

**(7) Production Expenditures.**

(a) Base Investment. The \$500,000 investment threshold or excess base investment threshold is computed on a per project basis. A television series (which can occur over two or more years), series pilot, or television movie shall each be considered a single television project. For purposes of the additional credit provided in O.C.G.A. § 48-7-40.26(c)(4) and (d)(4), multiple television projects by a single production company will be aggregated.

(b) Direct use. A production company may only claim production expenditures that are directly used in a qualified production activity. In determining whether an expenditure is directly used in a qualified production activity, the Department of Revenue will consider the proximity of the expenditure to the activity as well as the causal relationship between the expenditure and the activity.

(c) Production expenditures include preproduction, production, and postproduction expenditures incurred in this state that are

directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia based travel agency or travel company; insurance costs and bonding, if purchased through a Georgia based insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include postproduction expenditures for marketing and distribution.

(d) Depreciation on production expenditures with a useful life of more than one year. The costs of production expenditures with a useful life of more than one year are considered “other direct costs of producing the project in accordance with generally accepted entertainment industry practices.” Such costs shall be included in the computation of the film tax credit for the taxable year based upon the depreciation or amortization for the applicable taxable year. Such depreciation or amortization shall be determined pursuant to the Internal Revenue Code of 1986 and shall be prorated based upon the time the asset is used in qualified production activities in this state. Depreciation on expenditures incurred before the pre-production period shall not be included in the computation of the Film Tax Credit in this state.

(e) Georgia based agency or company. In order to include production expenditures for airline or insurance costs, the

expenditure must have been made through an agency or company whose headquarters are located in Georgia.

(f) Salaries. Total aggregate payroll, as such term is used in the Act, includes bonuses, incentive pay, and other compensation paid to an employee which is included in the employee's Form W-2 "Wage and Tax Statement". Reimbursed expenses, per diems, or employer paid benefits and taxes are not included in aggregate payroll unless such amounts are included as wages, tips, or other compensation in the employee's Form W-2 "Wage and Tax Statement". For purposes of this rule, the term "employee" means any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the status of an employee.

**(8) Production Company Claiming Credit.**

(a) Income tax. For a production company to claim the film tax credit, it must attach Form IT-FC "Film Tax Credit" and the Department of Economic Development credit certification(s) to its Georgia income tax return for each tax year in which the qualified expenditures were incurred.

(b) Withholding Tax. The production company may claim any excess film tax credit against its withholding tax liability. The withholding tax benefit may only be applied against the withholding tax account used by the production company for payroll purposes.

1. Notice of Intent. To claim any excess film tax credit not used on the income tax return against the production company's withholding tax liability, the production company must file Revenue Form IT-WH *Notice of Intent* at least thirty (30) days prior to the due date of the Georgia income tax return (including

extensions) or at least thirty (30) days prior to the filing of the income tax return, whichever occurs first. Failure to file this form as indicated will result in disallowance of the withholding tax benefit. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

2. Review Period. The Department of Revenue has ninety (90) days from the date the income tax return claiming the film tax credit is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the production company stating the film tax credit amount which may be applied against withholding and when the production company may begin to claim the film tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments.

(c) Use of Other Tax Credits. Production companies claiming the film tax credit may not claim the job tax credit or headquarters tax credit for employees whose wages are used to calculate the film tax credit.

**(9) Conditions and Limitations.**

(a) A production company must provide the Department of Revenue with sufficient detail of all qualifying expenditures used to meet the base investment and calculate the film tax credit.

(b) Except as otherwise provided, a taxpayer may utilize the film tax credit only to the extent of the taxpayer's income tax liability in a given tax year.

(c) There is a five-year carry forward period from the end of the tax year in which the qualifying expenditures were made and the production company established the amount of the film tax credit for such tax year. Any film tax credits that cannot be used against a taxpayer's income tax liability in the year established will be carried forward. For example, the amount of a film tax credit established in the calendar 2005 tax year may be carried forward until it expires on December 31, 2010.

(d) Film tax credits may not be carried back and applied against a prior year's income tax liability.

(e) Any Department of Revenue audit triggered by a production company's use or transfer of a film tax credit will require the production company to reimburse the Department of Revenue for all costs associated with the audit. The Department of Revenue will inform the production company that the audit is a film tax credit audit and thus subject to this clause prior to the commencement of the audit. Routine audits of the taxpayer's activity in Georgia are not subject to this provision.

(10) **Pass-Through Entities.** When a production company generating a film tax credit is a pass-through entity, and has no income tax liability of its own, the film tax credit will pass to its members, shareholders, or partners based on the year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the production company that incurred the qualifying expenditures to establish the amount of the film credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess film tax credit against their withholding tax liabilities. The credits are available for use as a



credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2006. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2006 tax year.

(11) **Selling or Transferring the Film Tax Credit.** The production company may sell or transfer its unused film tax credit subject to the following limitations:

(a) The production company may only make a one-time sale or transfer of film tax credits earned in each taxable year. However, the sale or transfer may involve more than one transferee.

(b) The film tax credit may be transferred before the tax return is filed by the production company. However, the amount transferred cannot exceed the amount of the credit which will be claimed and not used on the income tax return of the transferor.

(c) The film tax credit must be sold for a minimum of 60 percent of the credit amount.

(d) The production company must file Form IT-TRANS "Notice of Tax Credit Transfer" with both the Department of Economic Development and Department of Revenue within 30 days of the transfer or sale of the film tax credit.

(e) The production company must provide all required film tax credit detail and transfer information to the Department of Revenue. Failure to do so will result in the film tax credit being disallowed until the production company complies with such requirements.

(f) The carry forward period of the film tax credit for the transferee will be the same as it was for the production company. This credit may be carried forward for five years from the end of the tax year in which the qualifying expenditures were incurred. For example: The production company sells a film tax credit on September 15, 2006. This credit is based on qualifying expenditures from the calendar 2005 tax year. The credit may be claimed on the 2005 return and the carry forward period for this credit will expire on December 31, 2010. This treatment applies regardless of whether it is being claimed by the production company or the transferee.

(g) A transferee shall have only such rights to claim and use the Film Tax Credit that were available to the production company at the time of the transfer excluding the withholding tax benefit which is not available to the transferee. Thus, a transferee shall not have the right to subsequently transfer such credit since that right has been utilized by the transferor.

**(12) How to Sell or Transfer the Tax Credit.**

(a) Direct Sale. The production company may sell or transfer the film tax credit directly to a Georgia taxpayer (or multiple Georgia taxpayers as provided in subparagraph (11)(a) of this rule), unless the production company is a pass-through entity, in which case the shareholders, members, or partners will be able to sell or transfer the film tax credit directly to a Georgia taxpayer.

(b) Pass-Through Entity. The production company may be structured as a pass-through entity. As a pass-through entity, the tax credit will pass through to the shareholders, partners or members of the entity based on their year ending profit/loss percentage. The shareholders, members, or partners may then sell their respective film tax credit to a Georgia taxpayer.

(c) **Transferee Pass-Through Entity.** The production company, or its shareholders, members or partners, may sell or transfer the tax credit to a pass-through entity. The pass-through entity may then pass the credit through to its shareholders, members, or partners based on the pass-through entity's year ending profit/loss percentage. For example, if a partnership is buying the credit earned by a production company in the 2005 tax year, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 2005 tax year in which the credit was established. Only partners who have a profit/loss percentage as of the end of the applicable tax year may receive their respective amount of the film tax credit.

(d) The credits are available for use as a credit by the transferee for the transferee's tax year in which the income tax year of the transferor ends. For example: A corporation earns the credit for its tax year ending January 31, 2006. The corporation transfers the credit to a calendar year individual. The credit is available for use by the individual beginning with the calendar 2006 tax year.

(e) If tax credits are passed through to the shareholders, partners or members of a pass-through entity, then such pass-through entity must file Form IT-TRANS "Notice of Tax Credit Transfer" with the Department of Revenue at the time the production company files its income tax return. In the event of a pass-through Form IT-TRANS does not need to be filed with the Department of Economic Development. The entity shall indicate on the Form IT-TRANS that it is reporting a pass-through of tax credits as opposed to a transfer or sale of tax credits. The filing of the Form IT-TRANS shall not cause the pass-through of tax credits to be deemed to be a transfer or sale of such tax credits.

**Chapter 560-7-8****Returns and Collections**

(13) **Effective Date.** This rule is applicable to taxable years beginning on or after January 1, 2005.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.26.